

**IN THE HIGH COURT OF ORISSA, CUTTACK**  
**(Original Jurisdiction Cases)**

W.P. (C) (PIL) No. 30072 of 2020

Code No. : 219900

IN THE MATTER OF:

An application under article 226 and  
227 of Constitution of India.

AND

IN THE MATTER OF:

An application for Public Interest  
Litigation.

AND

IN THE MATTER OF:

An application challenging in-action of  
authority in not taking appropriate  
stapes for damage to the environment  
and climate change due to propose  
cutting of trees for over approximately  
20 acres in Ekamra Kanan where  
decision of the General Administration  
(GA) department to take over 20 acres  
of Ekamra Kanan land. .

AND

IN THE MATTER OF :

An application for direction to the opp.  
parties not to take risk of increase of  
air pollution due to loss of age old  
trees and not to construct high raise  
building by destroying the green cover  
existing in Ekamra Kanan,

Bhubaneswar where the government has planned the alienation of the land for construction.

AND

IN THE MATTER OF :

An application for violation of article 21 of the constitution of India ensuring right of the citizens to live with dignity and peace where the Human Rights of Citizens of the Bhubaneswar City for being deprived of clean air and dignified living which is evident if Ekamra Kanan is turned to be a commercial concrete jungle for Revenue generation.

AND

IN THE MATTER OF:

Smt. Jayanti Das, aged about 60 years, W/o-Sri Kumuda Bandhu Das, At-Mahamadia Bazar, Po-Chandinichowk, Ps-Lalbag, Town/Dist-Cuttack

.... .... Petitioner

-Versus-

1. State of Orissa, represented through the principal secretary, General Administration Department, Lok Seva Bhawan, Bhubaneswar, Dist.- Khurda.

2. The Chief Secretary, to the Govt. of Odisha, Lok Seva Bhawan, Bhubaneswar, Dist.- Khurda, Odisha.
3. The Secretary, Housing & Urban Development, Odisha Lok Seva Bhawan, Bhubaneswar, Dist.- Khurda, Odisha,
4. The principal Secretary of Horticulture Department. Govt. Of Odisha.At.- Directorate of Horticulture Govt. of Odisha, Bhubaneswar.
5. The Commissioner, Bhubaneswar Municipal Corporation, At/P.o- Bhubaneswar, Dist.- Khurda.
6. The Ministry of Environment & Forest, New Delhi, represented through its Secretary, New Delhi, India.
7. The Chairman, B.D.A, At/P.o- Bhubaneswar, Dist - Khurda.
8. The Collector, At/P.o/P.s/Dist.- Khurda,

.... .... ..Opp. Parties

To,

The Hon'ble Justice Mohammad Rafiq, M.Com, LL.B, the Chief Justice of Orissa High Court and His Lordship's Companion Justices of the said Hon'ble Court.

The matter out of which this PIL writ application arises was never before this Hon'ble court at the instance of the petitioner in the present form.

The humble petition of the petitioner named above.

**MOST RESPECTFULLY SHEWETH**

1. That the instant writ petition under Article 226 of the Constitution of India is being filed by way of Public Interest Litigation by the petitioner questioning the seer inaction of the Opp. Parties in not taking appropriate steps for propose cutting of trees over 20 Acres of land in Ekamra Kanan, Bhubaneswar by increasing Air pollution due to loss of tree and planned farm to be a commercial concrete jungle.
2. That the petitioner is a citizen of India and resides within the territorial jurisdiction of this Hon'ble Court and the cause of action for filing of the present Public Interest Litigation also arose within the jurisdiction of this Hon'ble Court.
3. That the petitioner is a social activist and always fights for the well-being and development of the general people at large and more concerned for the overall development of the down trodden people of the society. The petitioner is also actively associated for the different cause

of the society drastically affecting the well-being of the people, such as illiteracy, blind religious faith and exploitation of people by the group of religious monarch by exerting fear under the garb of religious faith and customs.

4. That it is humbly submitted that the petitioner is filing the present writ petition on her own and not at the instance of someone else. The litigation cost, including the Advocate's fee and the Travelling Expenses of the lawyer, if any, are being borne by the petitioner herself.

5. That the facts of the case in brief as follows :-

(5).1. That the petitioner being a peace loving and law abiding citizen considers it as her right as well as her duty to her bring the notice of this Hon'ble court by way of public interest litigation about propose cutting of age old trees and turning Ekamra Kanan to be a commercial concrete Jungle for revenue generation on the risk of increase of air pollution in Bhubaneswar city.

(5).2. That the Ekamra Kanan is a Botanical Garden and a park located in Bhubaneswar. This is a biggest park and one of the most popular tourist attractions in the city. And is spread over an area of 500 Acres of lands. This botanical park is a part of Govt. of Odisha's Research organization Regional plant Resource Centre. A recent

decision of the GA department to take over 20 Acres of Ekamra Kanan Land for construction of high rise building by destroying the green cover.

**(5).3.** That the farmland spread over 25 Acres have 20 Acres nursery beds, diverse species of several trees and remaining 5 Acres buildings the Govt. has planed the alienation of land for constructions of building by destroying the green cover. An official communication from GA Department to Horticulture Department said, this is to intimate that decision has been taken by the Govt. to surrender 20.192 Acres from Ekamra Kanan farm to GA and PG Department expecting an area of 5.775 Acres there are buildings. Therefore if civil construction /high rise building will be constructed over there it is likely to harm the local ecology.

**(5).4.** That it is pertinent to mention here that the petitioner came to know about making Ekamra Kanan, Bhubaneswar a Botanical garden into a Commercial concrete structure from the electronics media and Orissa Post dtd. 28.10.2020.

The true copy of the Orissa POST dated 28.10.2020 downloaded is annexed here with marked as **ANNEXURE. 1**

(5).5. That the petitioner humbly submits that she had sent representation on 30.10.2020 through E-mail to the Chief Secretary, of Odisha and others regarding the above mentioned issue and requested to stop the project on various grounds and asked certain documents to provide for initially such hazardous project which is not necessary.

The Copy of representation is annexed herewith and marked as **ANNEXURE-2.**

(5).6. That the petitioner has strong apprehension that the proposed project will damage the ecological balance and environment as a 20 Acres of fertile land full of trees and plants will be eliminated and concrete structure will be erected only for monitory consideration.

(5).7. That the Human Rights of the Citizens of Bhubaneswar is violated as they are going to be deprived from a peaceful dignified life which they are presently enjoying in the form of clean air, moving walk, laughter club, seeking greenery, feeling the warmth of living creatures sheltered in the trees, vision of fruit bearing trees and blooming flowering plants and above all a hub of medicinal plants and herbs.

(5).8. That Article 21 is going to be directly hit if the project is allowed as it will take away the warmth of life

and increase the misery in lifestyle of the citizens in the form of anger, frustration, helplessness, disease both physical and mental and above all pain of losing such a Botanical garden nurtured over years generation after generation having emotional attachment.

6. That the present Writ petition has been file on the following amongst others;

### GROUND S

(a). For that Govt. should always get in the interest of public in a democratic system and not at the cost of public interest.

(b). For that the Govt. is liable to take consent from the Central Govt. to go ahead with any project which involves Environment, Urban land, Rivers, Trees as these are falling under concurrent list and state Govt. cannot use its sole discretion in such matters.

(c). For that Govt. should venture its commercial projects in non-fertile land for creating concrete jungles but not at the cost of any damage to human beings, animals, birds, rivers, air etc. which are precious, invaluable and God gifted and should not be exploited for any monetary benefits.



- (d). For that Democratic Govt. is a welfare state and well-being of its citizens should be priority not monetary gains.
- (e ). For that the Govt. of Odisha needs to provide the Blue print of the project, minutes of the meeting with full details which approved the project which is going to have radical effect on the residents of Bhubaneswar.
- (f). For that the Govt. is supposed to provide the NOC and consent along with approvals from Central Govt. in the Court before it starts the project.
- (g). For that the Govt. has provided the cost benefit analysis of the project to the Hon'ble Court to prove its genuineness towards residents of Bhubaneswar who are going to face the hazardous consequences of the project.
- (h). For that the Govt. has to provide sufficient reasons and grounds of selection of age old Ekamra Kanan to be eliminated because projects by Govt. cannot be initiated at its sweet will and without any analysis of its effect.

- (i) For that there is every chance of the petitioners apprehension that if there is no legal action taken in time to prevent such hazardous projects for commercial purpose and no urgency for the Govt. to go ahead with such projects than there will be serious environmental issues for the people of the state.

7. That there being no other equally speedy and efficacious remedy available the petitioner begs to invoke the extraordinary jurisdiction of this Hon'ble court under article 226 of the constitution of India.

**P R A Y E R**

The petitioner, therefore, prays that this Hon'ble court be graciously pleased to admit the public litigation and issue a Rule NISI calling upon the OPP. Parties to show cause as to why a writ of mandamus or any other appropriate Writ/Writs shall not be issued to the Opp.

Parties:-

- (i) Directing the Opp. Parties to change their decision to take over 20 Acres of Ekamra Kanan land and not to carry out any commercial project or high rise buildings by destroying the green cover there.

- (ii) Directing for immediate ban on cutting of trees and for a direction to the Govt. to provide the Satellite picture of the Ekamra Kanan, Bhubaneswar along with details of the Botanical garden like number of trees varieties of plants, its annual revenue generation and produce all the relevant documents.
- (iii) If the Opp. Parties fail to show cause or show insufficient cause, to make the said rule absolute.

And pass an order(s)/direction(s) as this Hon'ble Court deem fit and proper.

And for this act of kindness the petitioner as in duty bound shall ever pray.

Cuttack

By the petitioner through

Date :

- Advocate

**AFFIDAVIT**

I, Jayanti Das, aged about 60 years, W/o-Sri Kumuda Bandhu Das, At-Mahamadia Bazar, Po-Chandinichowk, Ps-Lalbag, Town/Dist-Cuttack, do hereby solemnly affirm and state as follows :

1. That I am the petitioner in this writ application.
2. That the facts stated in this writ application all are true to the best of my knowledge.

Identified by

**Advocate**

*Jayanti Das*

**DEPONENT**

**CERTIFICATE**

Certified that due to non-availability of cartridge paper this matter has been typed on thick white papers.

**Advocate**



relevant official records and competent to swear this affidavit in my official capacity.

3. That the writ petition in the nature of a Public Interest Litigation has been filed praying for issue of a direction to the opposite parties on the following:

- (i) "Directing the Opp. Parties to change their decision to take over 20 acers of Ekamra Kanan land and not to carry out any commercial project or high rise buildings by destroying the green cover there.
- (ii) Directing the immediate ban on cutting of trees and for a direction to the Government to provide the Satellite picture of the Ekarama Kanan, Bhubaneswar along with details of the Botanical Garden like number of trees varieties of plants, its annual revenue generation and produce all the relevant documents. ... "

4. That, it is humbly submitted that the Writ Petition as laid is devoid of any merit either in facts or in law and is liable to be dismissed by the Hon'ble Court.

5. That the petition is not otherwise maintainable as the petitioner has suppressed material facts and hence he is not entitled to get any relief seeking equitable relief prayed for and the writ petition is liable to be dismissed in limine.

ManasRajjan Samal

6. That in reply to the averment made in Paragraph-1 of the writ petition, it is humbly submitted that "Ekamra Kanan, at Bharatpur and Jayadev Vihar, Bhubaneswar covers an area measuring Ac. 475.970 dec. under the possession of Regional Plant Research Centre (RPRC) under the Forest & Environment Department. The Forest & Environment Department is the lawful owner of the above land and in possession over the area. This area is otherwise known as "Ekamra Kanan Park ".

7. That the averment made in Paragraph-2 to 4 of the writ petition need no reply from the answering Opp.Parties, as those are matter of record however the petitioner is put to strict proof of the same.

8. That the averments made in paragraph 5(1) of the writ petition are not correct and are hereby denied. It is humbly submitted that the contention of the petitioner in Paragraph-5 (1) of the writ petition, that the Opp. Parties are taking steps for "cutting of age old trees and turning Ekamra Kanan to be a commercial concrete jungle for revenue generation on the risk of increase of air pollution in Bhubaneswar City" are imaginary and without any basis. Since, Forest & Environment Department is the lawful owner of the land, the question of raising a concrete jungle over the same by GA and PG Deptt. does not arise at all.

9. That in Paragraph-5(2) of the writ petition, the Petitioner has alleged that GA Deptt. has taken a decision to take over 20

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acres of Ekamra Kanan land for construction of high rise building by destroying the green cover. It is humbly submitted that such averment of the petitioner is imaginary and without any basis.

10. That in reply to the averments made in paragraph-5(3) of the writ petition, it is humbly submitted that one Horticultural farm under the Agriculture and Farmer's Empowerment Deptt. (A & FE) Department is functioning in village-Jayadev Vihar and Paikanagar managed by the Director of Horticulture. After careful consideration, the Agriculture and Farmer's Empowerment Deptt. has taken a decision to surrender the surplus and unutilized land measuring Ac. 20.225 dec. in favour of the GA and PG Deptt. That GA and PG Deptt is the custodian of Government land within the Bhubaneswar Municipal Corporation area as per Rule-4 of the Odisha Government Rules of Business. The area is now under the possession of Director of Horticulture. Physical possession of land in question has not been handed over to the GA and PG Deptt. The allegation of any civil construction and high rise building is quite imaginary and far from truth. The petitioner has totally misconceived the Horticultural farm as "Ekamra Kanan". The Horticultural firm under the Director of Horticulture relating to the following Land schedule:

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LAND SCHEDULE

Mz-Jayadev Vihar Unit-16		PS -New Capital, No.33	
Khata No.	Plot No.	Area	Kissam
1427	882(pt.)	Ac.2.148 dec.	Gharabari-II
	883(pt.)	Ac. 1.705 dec.	Gharabari
	884(pt.)	Ac. 1.922 dec.	Gharabari
1427	885(pt.)	Ac.0.003 dec.	Sadak
1427	1254(pt.)	Ac.0.030 dec.	Gharabari
	<b>Total</b>	Ac.5.808 dec.	
Mz-Paikanagar, Unit-18		PS-New Capital , No.34	
Khata No.	Plot No.	Area	Kissam
186 (GA Deptt.)	59(pt.)	Ac. 0.610 dec.	Patita
	4(pt.)	Ac. 0.081 dec.	Jungle-II
	7/432(pt.)	Ac. 3.228 dec.	Patita
	3/433(pt.)	Ac. 0.841 dec.	Patita
	4/434(pt.)	Ac. 4.411 dec.	Patita
	7(pt.)	Ac. 9.000 dec.	Patita
	5(pt.)	Ac. 2.021 dec.	Jungle-II
	<b>Total</b>	Ac. 20.192 dec.	
	<b>Grand Total</b>	<b>Ac. 26.000</b>	

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11. That on the other hand "Ekamra Kanan" is located in village-Bharatpur and Jaydev Vihar out of the total area Ac. 475.970 dec., area Ac 470.390 dec relates to Mouza-Bharatpur. Area measuring Ac. 5.580 dec. relates to Mouza-Nayapalli (Hal revenue Village-Jayadev Vihar). The detail land schedule relating to Mouza-Nayapalli ( Hal revenue village Jayadev Vihar) relating to Ekamra Kanan is indicated below:

Mz-Jaydev Vihar		PS-New Capital	
Khata No.	Plot No.	Area	Kissam
1427(G.A.Deptt.)	619/2338	Ac.0.078 dec.	
	619/2339	Ac.0.072 dec.	
	619/2366	Ac. 0.054 dec.	
	619	Ac. 0.090 dec.	
	619/2340	Ac. 0.126 dec	
	619/2341	Ac. 0.205 dec.	
	620/8158	Ac. 0.130 dec.	
	626	Ac. 0.063 dec.	
	613/2379/8159	Ac. 0.024 dec.	
	613/2380	Ac. 0.108 dec.	
	613/8162	Ac. 0.090 dec	
	613/2381	Ac. 0.060 dec	
	613/2383	Ac. 0.072 dec	
	613/2389	Ac. 0.062 dec	
	613/2382	Ac. 0.112 dec	
	613/2398	Ac. 0.090 dec	
	613/2443/8160	Ac. 0.097 dec	
613/2378/8161	Ac. 0.044 dec		

ManasRanjan Samal

613/2377	Ac. 0.192 dec	
613/2442	Ac. 0.130 dec	
612	Ac. 0.435 dec	
636/8149	Ac. 0.475 dec	
635/8150	Ac. 0.318 dec	
634/8151	Ac. 0.073 dec	
633/8152	Ac. 0.845 dec	
632/8153	Ac. 0.110 dec	
631/2499	Ac. 0.262 dec	
631/2495	Ac. 0.251 dec	
631/2496/8154	Ac. 0.235 dec	
631/2497/8155	Ac. 0.207 dec	
631/2498/8156	Ac. 0.172 dec	
631	Ac. 0.251 dec	
631/2502/8157	Ac. 0.047 dec	
<b>Total</b>	<b>Ac. 5.580 dec.</b>	

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12. That in reply to the averment made in Paragraphs-5.6 to 5.8 of the writ petition, it is humbly submitted that the apprehension of the petitioner that the human rights of the citizens of Bhubaneswar is violated and they are going to be deprived of a peaceful dignified life which they are presently enjoying in the form of clean air, morning walk, laughter club, seeking greenery, feeling the warmth of leaving creatures sheltered in the trees, vision of fruit bearing trees and blooming flowering plants and above all a hub of medicinal plants and herbs are without any basis since the State have no such

proposal to raise any commercial concrete structure over the land in question as alleged. As such the warmth of life and the lifestyle of the citizens in Bhubaneswar is not going to be affected in any manner as apprehended by the petitioner.

13. That it is humbly submitted the facts stated and averments made in the writ petition which have not been specifically replied and are not matters of record shall be deemed to have been denied by the answering opposite Parties.

14. That the answering opposite Parties crave for leave of the Hon'ble Court to make further submissions and file further affidavits in support of their contentions, in the interest of justice and for effective adjudication by the Hon'ble Court.

15. That in view of the facts stated and submission made in the foregoing paragraphs, it is humbly submitted that the writ application is liable to be dismissed by the Hon'ble Court being devoid of any merit, the petitioner not being entitled to any of the reliefs sought for.

16. That the facts stated above are true to the best of my knowledge, based on available official records and the rest are humble submissions before the Hon'ble Court.

*I. Anand Rajan Samal*  
Deponent.

**AFFIDAVIT**

The above deponent being personally known to me appears before me on 07/1/21 at 11:00 AM AM/PM and states on oath that the contents of the show cause reply are true to the best of his knowledge based on official records.

Identified by

Executive Magistrate  
Bhubaneswar

Advocate's Clerk, A.G. Office

**CERTIFICATE**

Certificate that due to non-available of cartridge papers white papers have been used.

Cuttack

Dated:

Addl. Government Advocate.